

AMENDED IN SENATE JUNE 28, 2016

AMENDED IN SENATE JUNE 13, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2883**

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**Introduced by Committee on Insurance (Assembly Members Daly (Chair), Travis Allen, Bigelow, Calderon, Cooley, Cooper, Dababneh, Frazier, Beth Gaines, Gatto, Gonzalez, and Rodriguez)**

February 25, 2016

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An act to amend Sections 3351 and 3352 of, to add Section 77.7 to, and to repeal Section 6354.7 of, the Labor Code, relating to workers' compensation.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2883, as amended, Committee on Insurance. Workers' compensation: utilization review: employees.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, within the Department of Industrial Relations, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a utilization review process, and defines "utilization review" as utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve an injured worker from the effects of his or her injury, treatment

recommendations by physicians, prior to, retrospectively, or concurrent with providing medical treatment services.

Existing law also establishes the Commission on Health and Safety and Workers' Compensation in the department. Existing law directs the commission to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases. Existing law also authorizes the commission to conduct or contract for studies it deems necessary to carry out its responsibilities.

This bill would require the commission to conduct, or contract for the conduct of, a feasibility study regarding the extent to which physicians' requests for authorization of medical treatment for injured employees may be processed using an entirely paperless system. The bill would provide that the focus of the feasibility study shall be to determine whether the change to a paperless system would reduce the time required to provide medical treatment services to injured employees and improve the clarity and quality of communication between physicians and the employer's utilization review process. The bill would require the commission to consult with stakeholders, as specified, and would grant the commission discretion to decide whether to conduct or contract for the conduct of the feasibility study. The bill would also delete obsolete provisions.

Existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition, among other persons, officers and directors of a private corporation who are the sole shareholders of the corporation and working members of a partnership or limited liability company, as specified, unless they elect to come under the compensation provisions of the laws governing workers' compensation.

This bill would revise those exceptions from the definition of an employee to apply to an officer or member of the board of directors, as specified, if he or she owns at least 15% of the issued and outstanding stock of the corporation, or an individual who is a general partner of a partnership or a managing member of a limited liability company, and that person elects to be excluded by executing a written waiver of his or her rights under the laws governing workers' compensation, stating under penalty of perjury that he or she is a qualifying officer or director,

or a qualifying general partner or managing member, as applicable. The bill would specify the effective date of the waivers.

The bill would also make technical and clarifying changes to the provision excluding specified persons from the definition of employee.

Existing law proscribes the crime of perjury.

By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 77.7 is added to the Labor Code, to read:

2 77.7. (a) The commission shall conduct, or contract for the  
3 conduct of, a feasibility study regarding the extent to which  
4 physicians' requests for authorization of medical treatment for  
5 injured employees may be processed using an entirely paperless  
6 system. The focus of the feasibility study shall be to determine  
7 whether the change to a paperless system would reduce the time  
8 required to provide medical treatment services to injured employees  
9 and improve the clarity and quality of communication between  
10 physicians and the employer's utilization review process. To make  
11 that determination, the study shall also include an assessment  
12 regarding the current state of infrastructure in place to meet this  
13 goal, and any additional costs and requirements for providers and  
14 the state that may be deemed necessary to ensure efficiency,  
15 interoperability, and privacy protections in making the change to  
16 a paperless system.

17 (b) The commission shall consult with stakeholders, including  
18 employers, employees, and medical providers, in conducting or  
19 contracting for the feasibility study pursuant to subdivision (a).

20 (c) The commission shall have discretion to decide whether to  
21 conduct or contract for the conduct of the feasibility study pursuant  
22 to this section.

23 SEC. 2. Section 3351 of the Labor Code is amended to read:

1     3351. “Employee” means every person in the service of an  
2 employer under any appointment or contract of hire or  
3 apprenticeship, express or implied, oral or written, whether lawfully  
4 or unlawfully employed, and includes:

5     (a) Aliens and minors.

6     (b) All elected and appointed paid public officers.

7     (c) All officers and members of boards of directors of  
8 quasi-public or private corporations while rendering actual service  
9 for the corporations for ~~pay~~ pay. *An officer or member of a board*  
10 *of directors* may elect to be excluded from coverage in accordance  
11 with subdivision (p) of Section 3352.

12     (d) Except as provided in subdivision (h) of Section 3352, any  
13 person employed by the owner or occupant of a residential dwelling  
14 whose duties are incidental to the ownership, maintenance, or use  
15 of the dwelling, including the care and supervision of children, or  
16 whose duties are personal and not in the course of the trade,  
17 business, profession, or occupation of the owner or occupant.

18     (e) All persons incarcerated in a state penal or correctional  
19 institution while engaged in assigned work or employment as  
20 defined in paragraph (1) of subdivision (a) of Section 10021 of  
21 Title 8 of the California Code of Regulations, or engaged in work  
22 performed under contract.

23     (f) All working members of a partnership or limited liability  
24 company receiving wages irrespective of profits from the  
25 partnership or limited liability ~~company~~ company. *A general*  
26 *partner of a partnership or a managing member of a limited*  
27 *liability company* may elect to be excluded from coverage in  
28 accordance with subdivision (q) of Section 3352.

29     SEC. 3. Section 3352 of the Labor Code is amended to read:

30     3352. “Employee” excludes the following:

31     (a) A person defined in subdivision (d) of Section 3351 who is  
32 employed by his or her parent, spouse, or child.

33     (b) A person performing services in return for aid or sustenance  
34 only, received from any religious, charitable, or relief organization.

35     (c) A person holding an appointment as deputy clerk or deputy  
36 sheriff appointed for his or her own convenience, and who does  
37 not receive compensation from the county or municipal corporation  
38 or from the citizens of that county or municipal corporation for  
39 his or her services as the deputy. This exclusion is operative only  
40 as to employment by the county or municipal corporation and does

1 not deprive that person from recourse against a private person  
2 employing him or her for injury occurring in the course of, and  
3 arising out of, the employment.

4 (d) A person performing voluntary services at or for a  
5 recreational camp, hut, or lodge operated by a nonprofit  
6 organization, exempt from federal income tax under Section ~~501~~  
7 ~~501(c)(3)~~ of the Internal Revenue Code, of which he or she or a  
8 member of his or her family is a member and who does not receive  
9 compensation for those services, other than meals, lodging, or  
10 transportation.

11 (e) A person performing voluntary service as a ski patrolman  
12 who does not receive compensation for those services, other than  
13 meals or lodging or the use of ski tow or ski lift facilities.

14 (f) A person employed by a ski lift operator to work at a snow  
15 ski area who is relieved of, and is not performing any, prescribed  
16 duties, while participating in recreational activities on his or her  
17 own initiative.

18 (g) A person, other than a regular employee, participating in  
19 sports or athletics who does not receive compensation for the  
20 participation other than the use of athletic equipment, uniforms,  
21 transportation, travel, meals, lodgings, or other expenses incidental  
22 thereto.

23 (h) A person described in subdivision (d) of Section 3351 whose  
24 employment by the employer to be held liable, during the 90  
25 calendar days immediately preceding the date of injury, for injuries  
26 as described in Section 5411, or during the 90 calendar days  
27 immediately preceding the date of the last employment in an  
28 occupation exposing the employee to the hazards of the disease  
29 or injury, for diseases or injuries as described in Section 5412,  
30 comes within either of the following descriptions:

31 (1) The employment was, or was contracted to be, for less than  
32 52 hours.

33 (2) The employment was, or was contracted to be, for wages of  
34 not more than one hundred dollars (\$100).

35 (i) A person performing voluntary service for a public agency  
36 or a private, nonprofit organization who does not receive  
37 remuneration for the services, other than meals, transportation,  
38 lodging, or reimbursement for incidental expenses.

39 (j) A person, other than a regular employee, performing  
40 officiating services relating to amateur sporting events sponsored

1 by a public agency or private, nonprofit organization, who does  
2 not receive remuneration for these services, other than a stipend  
3 for each day of service no greater than the amount established by  
4 the Department of Human Resources as a per diem expense for  
5 employees or officers of the state. The stipend shall be presumed  
6 to cover incidental expenses involved in officiating, including, but  
7 not limited to, meals, transportation, lodging, rule books and  
8 courses, uniforms, and appropriate equipment.

9 (k) A student participating as an athlete in amateur sporting  
10 events sponsored by a public agency or public or private nonprofit  
11 college, university, or school, who does not receive remuneration  
12 for the participation, other than the use of athletic equipment,  
13 uniforms, transportation, travel, meals, lodgings, scholarships,  
14 grants-in-aid, or other expenses incidental thereto.

15 (l) A law enforcement officer who is regularly employed by a  
16 local or state law enforcement agency in an adjoining state and  
17 who is deputized to work under the supervision of a California  
18 peace officer pursuant to paragraph (4) of subdivision (a) of Section  
19 832.6 of the Penal Code.

20 (m) A law enforcement officer who is regularly employed by  
21 the Oregon State Police, the Nevada Department of Motor Vehicles  
22 and Public Safety, or the Arizona Department of Public Safety and  
23 who is acting as a peace officer in this state pursuant to subdivision  
24 (a) of Section 830.39 of the Penal Code.

25 (n) A person, other than a regular employee, performing services  
26 as a sports official for an entity sponsoring an intercollegiate or  
27 interscholastic sports event, or any person performing services as  
28 a sports official for a public agency, public entity, or a private  
29 nonprofit organization, which public agency, public entity, or  
30 private nonprofit organization sponsors an amateur sports event.  
31 For purposes of this subdivision, "sports official" includes an  
32 umpire, referee, judge, scorekeeper, timekeeper, or other person  
33 who is a neutral participant in a sports event.

34 (o) A person who is an owner-builder, as defined in subdivision  
35 (a) of Section 50692 of the Health and Safety Code, who is  
36 participating in a mutual self-help housing program, as defined in  
37 Section 50087 of the Health and Safety Code, sponsored by a  
38 nonprofit corporation.

39 (p) An officer or member of the board of directors, as described  
40 in subdivision (c) of Section 3351, if he or she owns at least 15

1 percent of the issued and outstanding stock of the corporation and  
2 executes a written waiver of his or her rights under this chapter  
3 stating under penalty of perjury that the person is a qualifying  
4 officer or director. The waiver shall be effective upon the date of  
5 receipt *and acceptance* by the corporation's insurance carrier and  
6 shall remain effective until the officer or member of the board of  
7 directors provides the insurance carrier with a written withdrawal  
8 of the waiver.

9 (q) An individual who is a general partner of a partnership or a  
10 managing member of a limited liability company who executes a  
11 written waiver of his or her rights under this chapter stating under  
12 penalty of perjury that the person is a qualifying general partner  
13 or managing member. The waiver shall be effective upon the date  
14 of receipt *and acceptance* by the partnership or limited liability  
15 company's insurance carrier and shall remain effective until the  
16 general partner or managing member provides the insurance carrier  
17 with a written withdrawal of the waiver.

18 SEC. 4. Section 6354.7 of the Labor Code, as added by Section  
19 84 of Chapter 6 of the Statutes of 2002, is repealed.

20 SEC. 5. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.